

From: [Hughes, John P](#)
To: [Alt, Nicole](#)
Subject: Revised initial action notice
Date: Wednesday, May 18, 2022 1:49:32 PM
Attachments: [Initial Action Notice - Colorado gray wolf 10\(j\) rule 20220518.docx](#)
Importance: High

Hi Nicole,

Please find attached a revised initial action notice for your review, incorporating timeline recommendations from Alicia Logalbo. I went with the "normal" three weeks between getting internal NOI approval to publication in the FR vs. her pessimistic 1-2 month estimate, in hopes that we can apply pressure in the right places. Let me know if you have any questions, and talk to you soon.

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United States Department of the Interior



FISH AND WILDLIFE SERVICE
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In Reply Refer to:
FWS/R6/ES

Memorandum

To: National Environmental Policy Act Review Team

From: Regional Director, Mountain-Prairie Region

Subject: Initial Action Notice for the Proposed Issuance of a Rule to Establish a Non-essential, Experimental Population of the Northern Gray Wolf in Colorado

I. INTRODUCTION

At the request of Colorado Parks and Wildlife (CPW), the U.S. Fish and Wildlife Service (Service) is developing a rule to designate a nonessential, experimental population (10(j) rule) under the Endangered Species Act (ESA) for northern gray wolves in Colorado to support CPW's wolf reintroduction program. The Service intends to develop an environmental impact statement (EIS), pursuant to the requirements of the National Environmental Policy Act (NEPA), regarding the proposed issuance of the 10(j) rule.

II. BACKGROUND

On November 3, 2020, Colorado voters approved Proposition 114, the Gray Wolf Reintroduction Initiative. The proposition, now considered state law, directs the CPW Commission to take the steps necessary to reintroduce gray wolves to lands west of the continental divide by December 31, 2023. On the same day, the U.S. Fish and Wildlife Service (Service) published a final rule (85 FR 69778) to remove gray wolves from the list of Threatened and Endangered wildlife in those areas of the lower 48 United States where they were federally listed, with the exception of the Mexican wolf. At least 3 cases were filed challenging the Service's delisting of wolves in the Northern District of California. On February 10, 2022, the court ruled and invalidated the Service's rule delisting gray wolves. With gray wolves returning to federal protection under the ESA, the State of Colorado has requested a rule to establish an experimental population to support their state-lead reintroduction efforts.

Preliminary Purpose and Need

The purpose and need is to analyze the impacts of a rule to support the State's reintroduction efforts including implementation of the state's plan to manage northern gray wolves. The proposed 10(j) rule is intended to provide management flexibility for CPW while implementing their wolf management plan, including options for lethal control in instances of domestic

livestock depredation. It could be open to approved tribal management plans if they are developed and approved.

The Service's purpose and need are to fulfill our ESA conservation authorities and obligations, and respond to CPW's request for the development of a 10(j) rule. The pending NEPA analysis will provide the Service with a decision tool to either develop a 10(j) rule or pursue other regulatory mechanisms to meet CPW's stated goal of providing management flexibility for northern gray wolves in Colorado.

III. POSITION OF AFFECTED STAKEHOLDERS

Many Federal and State agencies, local government officials, non-governmental organizations, agricultural producer groups, and landowners are interested in the development of CPW's wolf management plan, and are likely to closely track its development and the NEPA process associated with the proposed 10(j) rule. The state of Colorado has invested in a robust public participation process including seeking input from many stakeholder groups for the past year.

Elected and Appointed Official Perspectives

Colorado Governor Jared Polis is very supportive of wolf reintroductions and would like to see wolf reintroductions occur sooner than December 31, 2023. Local government officials in the portion of the state affected by Proposition 114 (essentially the counties west of the continental divide) have mixed reactions to the prospect of wolf reintroduction, and are especially concerned about the potential for domestic livestock depredation and negative effects on big game populations. Several local government officials participate in the Stakeholder Advisory Group (SAG) convened by CPW to help develop their wolf management plan.

Tribal Perspectives

The Service is committed to informing and coordinating on the proposed issuance of a 10(j) rule with local Tribes, including the Ute Mountain Ute Tribe, the Southern Ute Indian Tribe, and the Navajo Nation. Informal consultation with these Tribes is ongoing, and formal consultation will take place in conjunction with the NEPA scoping process. Tribes will also have the opportunity to provide input through the National Historic Preservation Act (NHPA) compliance processes.

IV. DISCUSSION

The reintroduction of wolves in Colorado is a State-lead effort. Wolves in Colorado are currently listed as endangered under the ESA. The state has specifically requested we develop a rule to designate an experimental population (10(j) rule) for wolves in Colorado to support their reintroduction program. The Service will work closely with the State and Tribes to develop a rule that supports state-lead reintroduction efforts, while respecting the sovereignty and wildlife management goals of affected Tribes. Section 10 of the ESA provides for the reintroduction of listed species and provide regulatory flexibility for these reintroduced populations. Integrating state and tribal management commitments in the rule to build consistency between the rule and CPW's management plan is key to address the uncertainty surrounding future Federal or state-led management of wolves in Colorado.

Environmental Review Framework

The NEPA compliance component of the proposed rulemaking action falls under the timelines and page limits described in Secretarial Order (SO) 3355, Streamlining National Environmental Policy Act Reviews and Implementation of Executive Order 13807 and associated guidance. The proposed rulemaking action does not fall under the framework of Title 41 of the Fixing America's Surface Transportation Act (FAST-41), Executive Order (E.O.) 13807, or the associated One Federal Decision Framework, as defined in Environmental Review Memoranda (ERM) 10-11.

The Service will publish an initial Notice of Intent (NOI) to prepare a draft EIS and initiate scoping on or around July 1, 2022. The Service anticipates completing the final EIS and ROD in December of 2023, consistent with the requirements of SO 3355.

V. TIMELINE AND NEXT STEPS

The recent reclassification of gray wolves as an endangered species has added a sense of urgency to the development of a 10(j) rule for Colorado. The Service will coordinate extensively with CPW to ensure that the draft management plan, proposed 10(j) rule, and draft EIS are prepared collaboratively. Completion of these products expeditiously is needed to allow time for public comments, revision of decision documents, and CPW Commission approval, which are expected to be completed by the end of 2023. By statute, the CPW Commission must finalize the reintroduction and management plan by December 31, 2023, and wolf reintroductions must occur by that same date. Therefore, the Service is expecting the need to complete a final EIS and final rule by the end of 2023.

The Service is now at Stage 1 (Initial Action Notice) of the clearance process as outlined in the Deputy Secretary's April 27, 2018, memorandum on this subject. Absent an objection or request for a briefing from the NEPA Review Team, the Service will proceed with preparing a NOI to develop an EIS. The Service expects to request approval to publish the NOI by June 8, 2022; that action would constitute Stage 2 of the clearance process. The Service anticipates briefing the NEPA Review Team on the status of EIS development by early September of 2022 (Stage 3 of the clearance process).

Tentative NEPA Timeline:

- July 2022: Publish NOI
- January 2023: Publish Draft EIS
- November 2023: Publish Final EIS
- December 2023: Sign the Record of Decision